

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4864 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHRIMATI HANSA D/O AJABRAO TULSIRAO MARATHA

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MRS SD TALATI, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the order of the detaining authority dated 27th May 1998 passed under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act (for short, "PASAA") is under challenge.

2. The brief facts are that the Commissioner of

Police, Ahmedabad City, considering the statements of two confidential witnesses and keeping in mind five registered cases against the petitioner under the Bombay Prohibition Act, came to the subjective satisfaction that the petitioner is bootlegger and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed.

3. The impugned order is under challenge on two grounds. So far as the first ground is concerned, it is a sheer waste of time because on the second ground, practically, the Home Department had decided and prejudged the writ petition and has forced the Court to allow the instant writ petition.

4. The second ground is that the two representations were made by the Advocate of the detenu on 23rd June 1998. One representation was addressed to the Chief Minister and the other was sent through the detaining authority to the State Government. From the two counter affidavits of Shri J.R.Rajput, Under Secretary to the State Government, it is clear that both the representations were returned to the Advocate of the detenu for obtaining signature or thumb impression and re-submit the same after compliance. This communication was wholly uncalled for. When the representations were sent by an Advocate, no authority or Vakalatnama from the detenu was needed nor the signature or thumb impression of the detenu was required on the representation. The representation on its face value should have been considered. Since this was not done, the detention as well as the continued detention of the petitioner is rendered illegal. I am fortified in this view from the pronouncement of the Apex Court in *Balchand Chorasias v. Union of India*, AIR 1978 SC 297.

5. The other ground for attack is that the activities were not prejudicial for maintenance of public order. If the petition succeeds on one ground, it would be a sheer waste of time to enter into this controversy. However, since this point was raised by the learned Counsel for the petitioner, it is being summarily answered.

6. The subjective satisfaction of the detaining authority that the petitioner is a bootlegger requires no interference because it is based on material on record, namely, registration of five cases against her under the Bombay Prohibition Act. The statements of two confidential witnesses also give some indication that the petitioner is engaged in bootlegging activity. However,

so far as the question of activities being prejudicial for maintenance of public order is concerned, neither these five registered cases nor the statements of two witnesses are enough for concluding that the questionable activities of the petitioner were prejudicial for maintenance of public order. The narration of incidents by the two witnesses do not stand on a better footing than the incidents narrated by the two witnesses in the case of M.J.Shaikh v. M.M. Mehta, C.P., 1995 (2) GLR 1268. If the Apex Court found that person rushing towards the witnesses and members of public showing revolver did not create a situation adverse to maintenance of public order, it is difficult to apprehend that a person rushing towards the public with a knife, can be said to have created a situation prejudicial for maintenance of public order. These incidents do not travel beyond the ambit of situation prejudicial for maintenance of law and order for which the remedy under the general law should have been taken and not under the preventive detention law. As such, the impugned order is rendered invalid on this ground also.

7. In the result, the writ petition succeeds and is hereby allowed. The impugned order of detention dated 27th May 1998, Annexure.B to the writ petition is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

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